87-2137

NO. _____

SUPREME COURT OF
THE UNITED STATES

OCTOBER TERM, 1987

VALERO ENERGY CORPORATION
and JERRY WOODSON, Petitioners,

vs.

JOE D. URRUTIA, Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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COUNSEL OF RECORD
FOR PETITIONERS

QUESTION PRESENTED FOR REVIEW

1. Whether a charge of employment discrimination must be "initially instituted" with a State deferral agency in order to accrue the benefits of the extended 300-day filing period provided by Section 706(e) of Title VII of the Civil Rights Act of 1964.[1]

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[1] Pub. L. 88-352, 78 Stat. 253, et. seq., became effective on July 2, 1965. Title VII, as amended by Pub. L. 89-554, 80 Stat. 662 (1966), Pub. L. 92-261, 86 Stat. 103 (1972), and Pub. L. 95-555, 92 Stat. 2076 (1978), is codified at 42 U.S.C. §2000e, et. seq.

LIST OF PARTIES TO THE PROCEEDING

The caption of the case in this Court contains the names of all parties to this proceeding: Valero Energy Corporation ("Valero" or "Petitioner"),[2]

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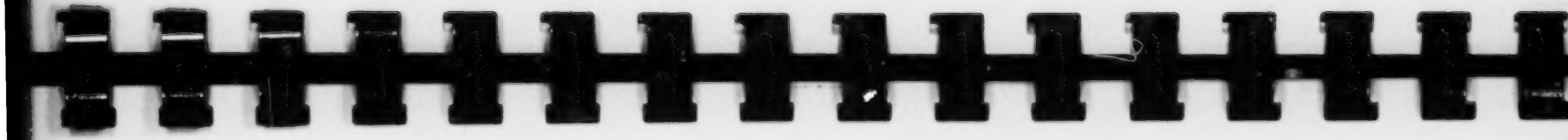
[2]There is no parent company of Valero Energy Corporation. The subsidiaries of Valero Energy Corporation are all wholly owned subsidiaries which are not required to be listed under S.Ct. R. 28.1, except for Bay Pipeline, Inc. Bay Pipeline, Inc. is wholly owned by Valero Natural Gas Partners, Ltd. P. Valero Energy Corporation wholly owns Valero Natural Gas Company, which is the general partner of Valero Natural Gas Partners, Ltd. P. The following affiliates are general partners of Valero Natural Gas Partners, Ltd. P.: Valero Transmission Company, Val Gas Company, Valero Industrial Gas Company, Valero Hydrocarbons Company, Valero Marketing Company, V.H.C. Pipeline Company, Valero Gathering Company, Reata Industrial Gas Company, Rio Pipeline Company, VLDC Company, V.H.C. Gas Systems Company, Mesquite Services Company, Valero Storage Company and Valero Gas Storage Company. The following affiliates are limited partners of Valero Natural Gas Partners, Ltd. P.: West Texas Transmission, Valero Management Partnership, Valero Transmission, Val Gas, Valero Industrial Gas, Valero Hydrocarbons, Valero

(Footnote Continued)



Jerry Woodson ("Woodson" or "Petitioner") and Joe D. Urrutia ("Urrutia" or "Respondent").

(Footnote Continued)
Marketing, V.H.C. Pipeline, Valero Gathering, Reata Industrial Gas, Rio Pipeline, VLDC, and V.H.C. Gas Systems.

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The opinion of the United States Court of Appeals for the Fifth Circuit, reversing the summary judgment of the District Court, is reported at 841 F.2d 123 (5th Cir. 1988). (Appendix "A"). The Order of the District Court of the Western District of Texas, granting Petitioners' Joint Motion for Summary Judgment on the issue of limitations, is unpublished. (Appendix "B").

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1). Since the Fifth Circuit rendered its judgment on March 31, 1988, this petition is timely filed pursuant to 28 U.S.C. §2101(c) and S.Ct. R. 20.4.

With respect to S.Ct. R. 17.1(a), the decision of the Fifth Circuit conflicts with Dixon v. Westinghouse Electric Corp., 787 F.2d 943 (4th Cir. 1986), cert. granted, 56 U.S.L.W. 3804

(U.S. May 23, 1988), vacated and remanded to the Fourth Circuit for further consideration, in light of EEOC v. Commercial Office Products Co., 56 U.S.L.W. 4424 (U.S. May 16, 1988), as to the question presented herein for review. Additionally, under S.Ct. R. 17.1(c), the question for review presents "an important question of federal law which has not been, but should be, settled by this Court."

STATUTORY PROVISION INVOLVED

This action involves the statutory interpretation of Section 706(e) of Title VII, which provides:

> A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment

> practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

42 U.S.C. §2000e-5(e). (Emphasis added).

STATEMENT OF THE CASE

Urrutia was discharged by Valero from his position as a chemical analyst on January 3, 1985, for threatening to "blow up" the laboratory in which he worked. On August 8, 1985 - - some 217 days after the date of his discharge - - Urrutia filed a charge of discrimination with the Equal Employment Opportunity

Commission ("EEOC") at its San Antonio, Texas, office. The Texas Commission on Human Rights' ("TCHR"), the Texas state deferral agency, sole office is located in Austin, Texas - - some 90 miles north of San Antonio.

Under a Worksharing Agreement, the EEOC has specifically "designate[d] and establishe[d] the [TCHR] as a limited agent of [the] EEOC for the purpose of receiving charges on behalf of the EEOC." See, Worksharing Agreement, Appendix "C", Para. 2a. (Emphasis added). However, the TCHR has made no such designation or agency appointment of the EEOC to accept or receive charges on behalf of the TCHR. Moreover, the TCHR is not given the opportunity or right to review the EEOC's resolution of a charge "deferred" to the EEOC for "initial processing." See, Worksharing Agreement at Appendix "C".

In accordance with the Worksharing Agreement between the EEOC and the TCHR, the EEOC determined, on August 8, 1985 -- the date Urrutia filed his charge -- that it should be the only agency to process Urrutia's charge. As such, it sent a transmittal form by mail on August 8, 1985, to the TCHR indicating that the EEOC would initially process Urrutia's charge "[p]ursuant to the worksharing agreement." In fact, the TCHR never acknowledged receipt of Urrutia's charge, as the certified copy of the Form 212-A transmittal letter is blank in the area indicating TCHR receipt.

With respect to the EEOC's decision to "initially process Urrutia's charge," under Para. 4(c)(8) of the Worksharing Agreement (Appendix "C"), the EEOC was assigned exclusive responsibility for "[a]ll charges covered under Title VII which are received by EEOC beyond 180

days but not before 300 days after the alleged violation." Indeed, under Para. 4(d) of the Worksharing Agreement, the TCHR "waive[d] the exclusive jurisdiction granted to it by 706(c) of Title VII for those charges assigned by this Agreement to the EEOC." More significantly, Urrutia's charge alleged discrimination on the basis of his national origin, Mexican-American, and in retaliation for his alleged threatening to file charges with the EEOC - - not the TCHR. Under the Worksharing Agreement (Para. 4c.16) only the EEOC had subject matter jurisdiction to consider the retaliation charge, in accordance with the terms of the Worksharing Agreement.

In fact, the day after Urrutia filed his charge, August 9, 1985, the EEOC wrote Urrutia stating it had "assumed jurisdiction" of Urrutia's charge and that "a courtesy copy . . . has been

forwarded to the . . . [TCHR] . . . for their information only." (Appendix "D"). (Emphasis added).

On August 21, 1986, Urrutia commenced this action against Valero and Woodson, his former supervisor. Urging that Urrutia's Title VII action was barred by limitations, as a matter of law, Valero and Woodson filed their Joint Motion for Summary Judgment on March 31, 1987. On June 1, 1987, subsequent to Urrutia's response, the District Court granted the Joint Motion for Summary Judgment on both issues raised under Title VII's applicable statute of limitations. Judgment, dismissing Urrutia's action with prejudice, was entered on the same day.

Urrutia timely filed his Notice of Appeal on June 17, 1987. The Fifth Circuit reversed the District Court in an opinion rendered on March 31, 1988.

ARGUMENT AND AUTHORITIES

A. Statutory Basis

Under Title VII, a plaintiff must timely file a charge of discrimination with the EEOC as a condition precedent to initiating suit in federal court. See, Love v. Pullman, 404 U.S. 522, 523 (1972); Alexander v. Gardner-Denver Co., 415 U.S. 36, 47 (1974); and, Zipes v. T.W.A., 455 U.S. 385, 392-98 (1982). As a general rule, a charge must be filed with the EEOC within 180 days of the alleged unlawful employment practice in order to be timely. 42 U.S.C. §2000e-5(e).

In order for a plaintiff to avail himself of the 300-day extended period for the filing of a charge of discrimination, he must, under the unequivocable language of the statute, fulfill two prerequisites:

1. "Initially institute" proceedings with the state or local agency; and,

2. The state or local agency must have the authority to grant or seek relief from the alleged unlawful employment practice.

B. Legislative History

In Mohasco Corp. v. Silver, 477 U.S. 807 (1980), this Court examined the legislative history surrounding Section 706(c) and (e), with emphasis on the purpose behind the deferral provisions of Title VII.[1] This Court, writing through Justice Stevens, spoke to the importance of deferral to state and local agencies:

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[1]Mohasco did not address the issues raised by Petitioners in the case at hand. Rather, Mohasco dealt with the interpretation of the word "filed" in Section 706(c) and (e), in connection with the mandatory 60-day deferral, to State agencies, found in Title VII.

> . . . Section 706(b)[2] was rather clearly intended to increase the role of the States and localities in resolving charges of employment discrimination. (footnote omitted). And §706(d)'s longer time of [300] days for filing with the EEOC in deferral States was included to prevent forfeiture of a complainant's federal rights while participating in state proceedings. (footnote omitted).
>
> But neither this latter provision nor anything else in the legislative history contains any "suggestion that complainants in some States were to be allowed to proceed with less diligence than those in other states." Moore v. Sunbeam Corp., 459 F.2d 811, 825, n. 35 (7th Cir. 1972). The history identifies only one reason for treating workers in deferral States differently from workers in other States:

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[2]The 1972 Amendments to Title VII added a new subsection (a) to Section 706. Subsections (b) and (d) in the 1964 version, with certain changes, thus became the current subsections (c) and (e) of Title VII. The 1972 amendments also extended the original filing times of 90 and 210 days with the EEOC and State Agencies, respectively, to the current 180 and 300-day requirements.

to give State agencies an opportunity to redress the evil at which the federal legislation was aimed, and to avoid federal intervention unless its need was demonstrated. (footnote omitted). The statutory plan was not designed to give the worker in a deferral State the option of choosing between his state remedy and his federal remedy, nor indeed simply to allow him additional time in which to obtain state relief. Had that been the plan, a simple statute prescribing a [180] day period in non-deferral States and a [300] day period in deferral States would have served the legislative purpose. Instead, Congress chose to prohibit the filing of any federal charge until after state proceedings had been completed or until 60 days had passed, whichever came sooner.

* * *

But there is no reason to believe that the 1964 Congress intended deferral state complainants to have the additional advantage of being able to ignore the [300] day limitations period when they failed to invoke their rights early enough to allow the 60-day deferral period to expire within the [300] day period.

> In sum, the legislative history of the 1964 statute is entirely consistent with the wording of the statute itself.

Mohasco, 447 U.S. at 820-23. (Emphasis added).

In addition to this Court's interpretation of the deferral provision of Title VII, those legislators deeply involved with the promulgation of Title VII provide further insight into this provision. Senator Humphrey, explaining the Senate version of the "deferral" provision which was to become Section 706(c), noted that the Senate proposal was intended to guarantee that States with "functioning anti-discrimination programs . . . will be given every opportunity to employ their expertise and experience without premature interference by the Federal Government . . . . At the same time, we recognized the absolute necessity of providing the Federal Government with authority to act in

instances where States and localities did not choose to exercise these opportunities to solve the problem of civil rights in a voluntary and localized manner . . ." 110 Cong. Rec. 12725 (1964). (Emphasis added).

Additionally, both Senators Humphrey and Dirksen explained the underlying policy consideration of the "deferral" provision of Title VII stating:

> (W)ith respect to the enforcement of the title, we undertook to keep primary, exclusive jurisdiction in the hands of the State commissions for a sufficient period of time to let them work out their problems at the local level.
>
> * * *
>
> When it comes to administration, I believe that we have done a reasonably good job on the substitute, hoping in every case that administration might be kept at a local level, because many cases are disposed of in a matter of days, and certainly not more than a few weeks. In the case of California, FEPC Cases are disposed of in an average of about 5 days. In my

> own State it is approximately 14 days.
>
> That will be the first point of contact when it comes to enforcement. It will be in the hands of the State.

110 Cong. Rec. 11937 (remarks of Sen. Humphrey) and 8193, 13087 (remarks of Sen. Dirksen). (Emphasis added).

The remarks of Senator Dirksen, in a colloquy with Senator Saltonstall, further emphasizes the meaning of "initial institution" of a charge of alleged discrimination with a State deferral agency:

> . . . There is no effort whatsoever, and no intention of absolving any State from the application of the proposed Federal legislation. What would happen is that, for administrative purposes, primary exclusive jurisdiction would be given to a State Commission, because the cases would be local cases. . . . But the aggrieved person would have an unqualified right in any case, where there is a State or no State law, to go to the proposed Equal Employment Opportunity Commission with his grievance. So no State would

> be absolved. The point is that administratively it would appear to be good administration to start with the procedure under a State's law for the first ninety days, and then if the question were not satisfactorily adjudicated in the State, the aggrieved person could go to the Equal Employment Opportunity Commission.

110 Cong. Rec. 9790 (May 1, 1964). (Emphasis added).

Clearly, the legislative history supports and confirms the plain meaning of Section 706(e) of Title VII. Deference to the intent and spirit of those legislators who supported Title VII should be recognized by this Court.

C. The Dixon Decision

As previously indicated, a complainant, in a deferral state, must "initially institute" proceedings with the State or local agency in order to have the benefit of the 300-day extended filing period. The Fourth Circuit, in Dixon, has held that the EEOC's

transmittal of a complainant's charge to a State agency, for "information purposes only," does not constitute "initially institut(ing)" a charge within the meaning of Section 706(e); therefore, the 180-day time period, rather than the 300-day extended time period, is applicable.

In Dixon, like the case sub judice, the EEOC and the State agency had entered into a Worksharing Agreement.

> Under Section 4.c. of the Worksharing Agreement between MCHR (Maryland Commission on Human Relations) and EEOC, "(t)he EEOC will take primary responsibility for processing all charges originally received by EEOC." In addition, Section 4.c.6. provides that the EEOC is to process all Title VII charges received by it "beyond six (6) months but before 300 days after the alleged violation." Section 4.d. states that the State agency "waives its exclusive right to specific periods of initial processing" granted to it by Title VII for those charges which the Worksharing Agreement assigns for initial processing to EEOC . . .

Dixon, 787 F.2d at 944, n. 1.[3] (Emphasis added).

The complainant in Dixon argued that she was entitled to the 300-day extended filing period due to the transmittal of her charge to the State agency.

> With respect to her allegation that the district court erred in holding that her EEOC charge was barred because it was not filed within 180-days of her discharge, Dixon maintains that the sending of the Charge and Transmittal Form 212-A to MCHR constituted a referral of the charge to the state agency within the meaning of Section 706(e). She contends that MCHR processed the charge and, as evidenced by its notation on the Form 212-A, elected not to proceed on it. Appellant argues that because the charge was referred to the state agency, the extended 300-day time limit for filing provided for in Section 706(e), and not

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[3]The provisions of the Worksharing Agreement in Dixon, found to be dispositive by the Fourth Circuit, are virtually identical to the provisions relevant to the instant charge.

the 180-day limit, applied here . . . .

We are unconvinced by Appellant' arguments . . . . The plain and unambiguous meaning of Section 706(e) is that a Title VII charge is timely only if filed with EEOC within 180 days of the alleged discriminatory act. The only exception is when there is a state or local deferral agency and the charging party has initially instituted proceedings before that deferral agency. In such a situation, the charge is deferred to that agency for "only one reason" - to give the state an opportunity to act and to "avoid federal intervention unless its need was demonstrated." Mohasco Corp. v. Silver, 447 U.S. 807, 821 (1980) (footnote omitted). . . .

EEOC's promulgation of 29 CFR §1601.13(a), providing plaintiffs in deferral states 300 days in which to file charges with EEOC even if their states charges are untimely, can not do away with the statutory requirement that a charge must be initially instituted with the state agency in order for the 300-day filing period of Section 706(e) to apply. As noted by the Supreme Court in Mohasco, EEOC's "'interpretation' of the statute cannot supersede the

language chosen by Congress." 447 U.S. at 825 (footnote omitted). Section 706(e) expressly states that in order for the 300-day period for filing EEOC charges to apply, the plaintiff must have "initially instituted proceedings with a State or local agency with authority to grant or seek relief from such (unlawful employment) practice." 42 U.S.C. §2000e-5(e) (emphasis added). Such was not the situation here.

In the instant case, Dixon filed her EEOC charge 230 days after her termination. She filed no charge with MCHR, although EEOC did forward a copy of her charge to the state agency. Because under the Worksharing Agreement between MCHR and EEOC(,) MCHR had waived its right to process initially charges filed originally with EEOC as well as those filed more than six months after the alleged violation, it was never contemplated that MCHR would play a substantial role in processing the charge. Moreover, the rationale for affording complainants in deferral states extra time to file their EEOC claims is to allow them the opportunity first to pursue state remedies. This rationale is extremely lacking in this case, because the state had already waived

its right to initially process appellant's claim.

> We conclude that EEOC's transmittal of the charge to MCHR was for informational purposes only and did not constitute an "initially instituted" charge within the meaning of the statute. Dixon had not "initially instituted" proceedings with MCHR as required by Title VII and, consequently she could not take advantage of the extended 300-day period for filing Title VII charges. See, Doski v. M. Goldseker Co., 539 F.2d 1326, 1329-30 (4th Cir. 1976). Accordingly, we hold that because appellant did not file her EEOC charge within 180 days of her termination, her action was barred. (footnote omitted).

Dixon, 787 F.2d at 945-46. (Emphasis added).

Like Dixon, Urrutia's charge was never "deferred", much less "initially instituted" with the TCHR. Indeed, the circumstances herein present even more compelling evidence that there was no meaningful "initial institution" of Urrutia's charge. Under the facts sub

judice, the TCHR could never assume jurisdiction of Urrutia's charge due to the retaliation allegation, as the Worksharing Agreement mandated that "[a]ll Section 704(a) [retaliation] charges will be processed exclusively by the EEOC where the original 703 [discrimination] charge is or has been processed by the EEOC."

The plain meaning of the statute is clear: Urrutia was required to have meaningfully "initially instituted" his charge of discrimination with the TCHR, before he could avail himself of the extended 300-day time period. Certainly, under all dictates of common sense, it is understandable that a charge of discrimination can never be "initially instituted" with an agency that has waived jurisdiction ab initio, especially where the charge in question alleges retaliation. In that instance, the

Worksharing Agreement commands that the EEOC, as recipient of the underlying national origin charge, take jurisdiction over the retaliation allegation.

Indeed, for all practical purposes, the Worksharing Agreement eliminated the TCHR's existence as a viable deferral agency. Here, the TCHR ab initio waived the "initial processing" of Urrutia's charge in direct contravention of Section 706(e)'s mandate to "initially institute" a charge with the deferral agency before entitlement to the 300 day filing period. To that end, the TCHR serves no purpose as a deferral agency when the initial institution of a charge of discrimination is circumvented by a private agreement between the federal and state agencies. By elevating form over substance, the Fifth Circuit has allowed the "complainants in some states . . . to proceed with less diligence than those in

other [non-deferral] states." Urrutia is not entitled to the 300-day extended period for filing, having failed to "initially institute" his charge with the State agency.

D. Commercial Office Products

On May 16, 1988, this Court determined that a State agency's decision to waive the exclusive 60-day deferral period, pursuant to a Worksharing Agreement with the EEOC, terminates the State agency's proceedings within the meaning of Title VII, even if the State agency retains jurisdiction to act on a charge at a later period in time. EEOC v. Commercial Office Products Co., 56 U.S.L.W. 4425 (May 16, 1988). In this regard, this Court granted certiorari in Dixon v. Westinghouse Electric Company, Cert No. 86-181, and vacated and remanded the Dixon action back to the Fourth Circuit in light of the decision in

Commercial Office Products. 56 U.S.L.W. 3804 (U.S. May 23, 1988).

Indeed, as this Court stated "[t]he primary question presented is whether a State agency's decision to waive its exclusive sixty-day period for initial processing of a discrimination charge, pursuant to a Worksharing Agreement with the EEOC, 'terminates' the agency's proceedings within the meaning of [Title VII], so that the EEOC may immediately deem the charge filed." 56 U.S.L.W. at 4425. Here, that question is not presented for review before this Court. The question herein concerns the mandatory "initial institution" of a charge with a State deferral agency in order to accrue the 300-day charge filing period.

Even assuming arguendo, that this Court's decision in Commercial Office Products may be interpreted to hold that

the EEOC's referral of a charge initially filed with the EEOC to the appropriate State agency properly institutes a State agency's proceedings within the meaning of Title VII, such a construction, without meaningful deferral, elevates form over substance and renders Title VII's mandates meaningless. In essence, a charge of discrimination, under this twisted interpretation of Commercial Office Products, could be "initially instituted" with a State deferral agency at the same moment that the State deferral agency "terminates" its proceedings in connection with the charge. Clearly, the framers of Title VII did not intend that a one-step process of "initially instituting" a charge, in conjunction with "termination" of the State agency's proceedings on that charge, take the place of the meaningful deferral they espoused in the legislative

history of Title VII. To hold such, would reduce Title VII's requirement of "initial institution" of the charge, with the State agency for the benefit of the 300-day filing period exception, to a meaningless clause in Section 706(e).

Mohasco notes that Title VII does not contain "any suggestion that complainants in some states . . . be allowed to proceed with less diligence than those in other states." 447 U.S. at 820. To allow a one-step procedure, which simultaneously "initially institutes" a charge and, at the same time, "terminates" the State agency's proceedings in connection with that charge, does give those complainants in States having deferral agencies "additional time in which to obtain . . . relief." Again, the whole purpose of a State deferral agency becomes meaningless. By rendering the State

agency essentially non-functional, charging parties in deferral states are given the 300-day filing period without having to fulfill the two prerequisites mandated under Section 706(e).

> . . . Had that been the plan, a simple statute prescribing a [180] day period in non-deferral states and a [300] day period in deferral states would have served the legislative purpose. Instead, Congress chose to prohibit the filing of any federal charge until after State proceedings had been completed or until sixty days had passed, whichever came sooner.

Mohasco, 447 U.S. at 822-23. Clearly, the Commercial Office Products decision by this Court is inapposite to the case sub judice. Indeed, to hold that Commercial Office Products is applicable to the issue of "initial institution," would turn Section 706(e) on its head and renders the deferral provisions of Title VII meaningless.

CONCLUSION

In Title VII, Congress has carefully crafted a remedial and procedural scheme aimed at eliminating employment discrimination in our nation through a joint federal/state effort. Included in this scheme are the 180 and 300-day charge filing limitations periods.

> The limitations periods, while guaranteeing the protection of the civil rights laws to those who promptly assert their rights, also protect employers from the burden of defending claims arising from employment decision that are long past. (Citations omitted).

Delaware State College v. Ricks, 449 U.S. 250, 256-257 (1980).

Here, Urrutia failed to meet the 180-day limitation period specified in Title VII. Under these circumstances, his belated filing with the EEOC on the 217th day was too late to save his charge under the 300-day filing exception, which commands an "initial institution" of a charge with the TCHR. Accordingly, the

case sub judice is barred by limitations as a matter of law, and, Valero and Woodson were entitled to the entry of a judgment under Rule 56. Therefore, this Petition for Writ of Certiorari should be granted to correct the error of the Fifth Circuit.

Respectfully submitted,

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Certificate of Service

I hereby certify that three (3) true and correct copies of the foregoing document have been forwarded to:

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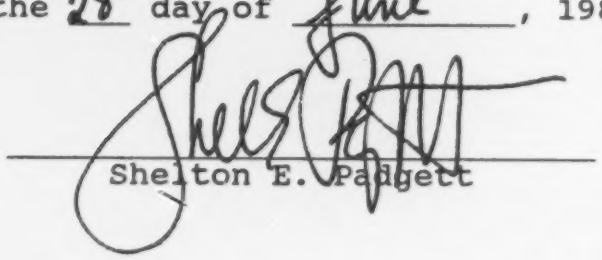

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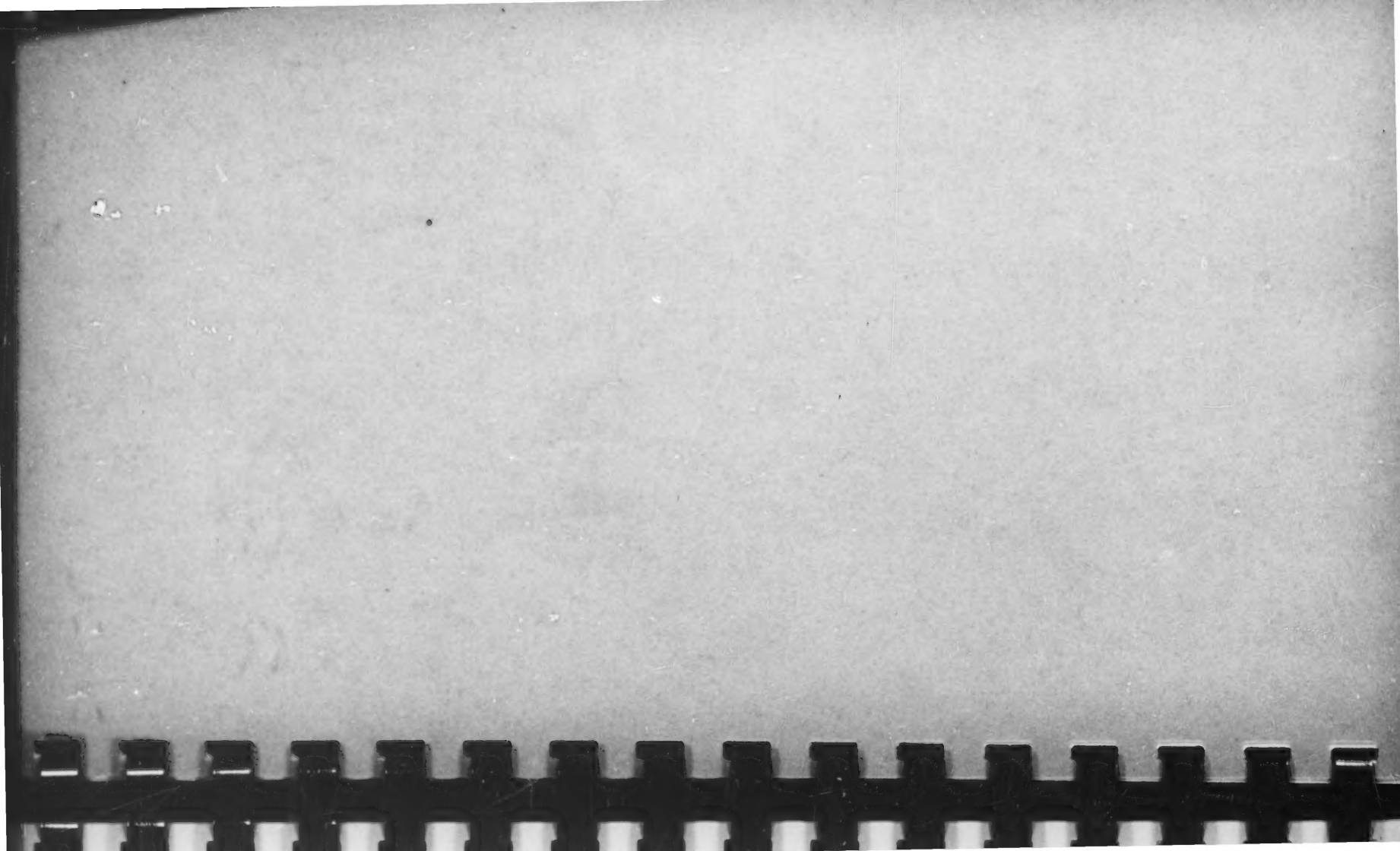

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 87-5548

D.C. Docket No. SA-86-CA-1186

JOE D. URRUTIA,

Plaintiff-Appellant,

versus

VALERO ENERGY CORPORATION and
JERRY WOODSON,

Defendants-Appellees.

Appeal from the United States District Court for the Western District of Texas

Before RUBIN, WILLIAM, and DAVIS, Circuit Judges.

OPINION

This case raises the question whether the EEOC's 300-day filing period for employment discrimination claims under Title VII, 42 U.S.C. §§2000e et. seq., is available when the appellant failed to file his claim with the Texas Commission within its 180 day limitation period. The Equal Employment Opportunity Commission (EEOC) has a typical

worksharing agreement with the Texas Commission on Human Rights (TCHR). Another panel of this Court has now held that a filing within the 300 day period is timely. That case controls our decision unless there are distinguishing circumstances. We find none.

I. FACTS AND PRIOR PROCEEDINGS

Appellant was employed as a chemist by appellee Valero Energy Corporation between 1977 and early 1985. In November, 1984, appellee Woodson, a Valero official, evaluated appellant's and two other employees' job performance. Woodson rated appellant "good" but the others "excellent," with the result that the others received higher percentage raises than did appellant. Appellant is Mexican-American; the other two are Anglo-Caucasians. Appellant complained to appellees that their employment practices were discriminatory. Valero

terminated appellant's employment on January 3, 1985, on the ground that he had allegedly threatened to blow up the company's laboratory. Appellant contends that his job performance was equal to that of the others, that he had not made the threats for which he was supposedly discharged, and that appellees terminated his employment because he was a Mexican-American and because he had complained of their discriminatory practice.

Appellant filed a discrimination complaint with the EEOC on August 8, 1985, 217 days after the alleged discriminatory discharge.[1] The EEOC

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[1]In accordance with routine practice, the EEOC transmitted a copy of the complaint to the TCHR the same day to notify the latter of its receipt. Under terms of the Worksharing Agreement between the EEOC and the TCHR, the EEOC had exclusive responsibility for

(Footnote Continued)

processed the claim and issued appellant a right to sue letter on May 22, 1986. Appellant filed this suit in the district court August 21, 1986.

Without proceeding to the merits, the district court granted appellees' motion for summary judgment on the ground that appellant had failed to comply with Title VII's filing requirements in two respects:

(1) Appellant had failed to file his complaint with the EEOC within the statutory 180-day requisite period. Filing 217 days after the last alleged violation did not bring him within the additional time period (allowing filing with the EEOC within 300 days of the last

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(Footnote Continued)
reviewing all Title VII charges received by the EEOC between 180 and 300 days after the alleged violation. Accordingly, the EEOC alone handled the claim.

violation) permitted by 42 U.S.C. §2000e-5(e) because he had not "initially instituted" his charge with the TCHR.

(2) Since the Texas Commission on Human Rights Act required that charges of discrimination be filed with the TCHR "within 180 days after the date the alleged unlawful employment practice occurred," and "untimely complaints shall be dismissed by the commission," Tex. Rev. Civ. Stat. Ann., art. 5221k, § 6.01(a) (Vernon 1983), appellant's claim before the TCHR was time-barred. Then, since the TCHR was not an agency "with authority to grant or seek relief" from the alleged violation because limitations had run, the court held that the extension to 300 days for filing with the EEOC provided by §2000e-5(e) did not apply.

42 U.S.C. §2000e-5(e) states, in relevant part:

> A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred . . ., except that in a case . . . with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief . . ., such charge shall be filed . . . within three hundred days after the alleged unlawful employment practice occurred[.]

In a thoughtful opinion, the district court explicated its reasons for holding that this statutory language barred appellant's claim. It concluded that appellant did not "initially institute" his charge of discrimination with the TCHR; that even if he had done so, the TCHR lacked "authority to grant or seek relief from such practice"; and that the 300-day filing period under §2000e-5(e)

was therefore unavailable to him. Other courts have similarly held in the past.[2]

II. ANALYSIS OF ISSUES ON APPEAL

We have recently held that the 300-day filing period provided in 42 U.S.C. §2000e-5(e) for cases in which state or local referral agency proceedings have been instituted applies whether or not these other proceedings were timely instituted under state or local law. Mennor v. Fort Hood National Bank, 829 F.2d 553, 556 (5th Cir. 1987). The majority of Circuit Courts of Appeal have held similarly.[3] Mennor was decided

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[2]See, e.g., Dixon v. Westinghouse Electric Corp., 787 F.2d 943 (4th Cir. 1986); Lowell v. Glidden-Durkee, Division of SCM Corp., 529 F.Supp. 17 (N.D. Ill. 1981); Battle v. Clark Equipment, Brown Trailer Div., 524 F.Supp. 683 (N.D. Ind. 1981).

[3]See e.g., Gilardi v. Schroeder, 833 F.2d 1226, 1229-33 (7th Cir. 1987); Maurya v. Peabody Coal Co., 823 F.2d 933

(Footnote Continued)

following the district court's decision in the present case and binds this Court. Mennor, however, does not cover specifically the arguments advanced by the district court in this case. So we respond briefly to them.

A. Initially Instituted

Appellant did not initially file his claim with the TCHR as §2000e-5(e), read literally, seems to require. The cases hold, however, that the requirement that persons aggrieved must initially

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(Footnote Continued)
(6th Cir. 1987); EEOC v. Shamrock Optical Co., 788 F.2d 491 (8th Cir. 1986); Seredinski v. Clifton Precision Products Co., a Div. of Litton Systems, Inc., 776 F.2d 56, 62 (3d Cir. 1985) (Claims must be filed within 240 days if not filed previously with state referral agency.); Thomas v. Florida Power and Light Co., 764 F.2d 768, 771 (11th Cir. 1985); Smith v. Oral Roberts Evangelistic Ass'n, Inc., 731 F.2d 684 (10th Cir. 1984) (Claims must be filed within 240 days unless state referral agency completes consideration prior to end of 300-day period). See also 29 C.F.R. §1601.13(a) (1987).

institute proceedings with the state referral agency is met by the EEOC's routine transmittal of a copy of the complaint to the state referral agency, as was done in this case.[4] Here the EEOC transmitted a copy of the "Charge of Discrimination" form (which was captioned "TEXAS COMMISSION ON HUMAN RIGHTS and EEOC") to the TCHR the same day it was received, August 8, 1985.[5]

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[4] EEOC v. Commercial Office Products Co., 803 F.2d 581, 585-86 (10th Cir. 1986), cert. granted, ___ U.S. ___, 107 S.Ct. 3208, 96 L.Ed.2d 695 (1987); Isaac v. Harvard University, 769 F.2d 817, 819 (1st Cir. 1985). But see Dixon, 787 F.2d at 945-46.

[5] The fact that the next day, August 9, the acting EEOC area director wrote appellant stating that a "courtesy copy" of his complaint had been forwarded to the TCHR "for their information only" is legally irrelevant. The form the EEOC sent the TCHR on August 8 was the same used regularly for complaints and transmittals forwarded to the TCHR.

To require more would merely impose a meaningless bureaucratic ritual on these agencies. Under terms of the Worksharing Agreement, the TCHR had already agreed that the EEOC was to have exclusive responsibility for processing all claims filed between 180 days and 300 days after alleged violations of Title VII.[6] Since the TCHR had already waived jurisdiction over Title VII claims filed within this time frame, all that was required to institute state proceedings was a nominal filing with the TCHR, which was accomplished when the EEOC transmitted appellant's discrimination charge on a standard form on August 8,

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[6]Worksharing Agreement Between the Equal Employment Opportunity Commission and the Texas Commission on Human Rights, § 4(c)(8).

1985. We hold that such proceedings were thereby initially instituted.[7]

B. Having Authority

The district court's second theory, likewise must give way to this Court's holding in Mennor that the 300-day period for filing with the EEOC is available

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[7]We briefly address a question not raised on this appeal but relevant to the issues involved in it. Section 2000e-5(c) provides that when state law has established an appropriate referral agency, no charge may be filed with the EEOC by the person aggrieved "before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been terminated." 42 U.S.C. §2000e-5(c). Emphasis added.

Clearly the 60-day waiting period does not apply on these facts. The TCHR had waived jurisdiction over the kinds of claims filed by appellant. We hold that the TCHR's proceedings constructively terminated on receipt of the August 8, 1985 Charge of Discrimination form. Under terms of the Worksharing Agreement, there was nothing further that the TCHR could have done with regard to appellant's claims. See Isaac, 769 F.2d at 827-28.

whether or not other proceedings are timely instituted under state or local law.

The district court found that the TCHR lacked authority to act on appellant's complaint. We disagree. Under the Worksharing Agreement, the TCHR had waived exclusive jurisdiction over Title VII actions; but it clearly was an agency having state-law authority to provide for the execution of the policies embodied in Title VII. It had the power to function as an authority that meets the criteria of 42 U.S.C. §2000e-5(c), and to grant or seek relief from discriminatory employment practices of the kinds alleged by appellant.[8] It had waived the exercise of that authority by

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[8]TEX.REV.CIV.STAT.ANN. art. 5221k, §§ 1.02, 3.02, 5.01, 5.05(a)(1) (Vernon 1987); 42 U.S.C. §2000e-5(c).

agreement, however, with the specific understanding that the waiver applied only to claims filed from 180-300 days. We hold that the TCHR was a state agency with "authority" to grant or seek relief from the practices here charged.[9]

Appellant, therefore, is entitled to the benefit of the 300-day filing period. We add that this is the position taken by the EEOC in its amicus brief. The EEOC urges that appellant is entitled to the 300-day filing period under §2000e-5(e).

III. CONCLUSION

We hold that appellant's filing of his employment discrimination complaint was within the limitation period. We reverse the district court's summary judgment in favor of appellees and remand

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[9] See Rasimas v. Michigan Department of Mental Health, 714 F.2d 614, 620-22 (6th Cir. 1983).

for further proceedings consistent with this opinion.[10]

REVERSED AND REMANDED

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[10]Our decision finding compliance with limitation requirements makes it unnecessary to consider appellant's "equitable tolling" argument. See Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 102 S.Ct. 1127, 71 L.Ed.2d 234 (1982).

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOE D. URRUTIA,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	CAUSE NO.
VALERO ENERGY	§	SA-86-CA-1186
CORPORATION AND	§	
JERRY WOODSON,	§	
	§	
Defendants.	§	

ORDER

ON THIS DATE came on to be considered Defendant's motion for summary judgment and the motion of Defendant, Jerry Woodson, for summary judgment, each in the above-styled and numbered cause.

Summary judgment is appropriate only if "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." Rule 56(c), Federal Rules of Civil Procedure; Impossible Electronic Techniques, Inc. v. Wackenhut Protective Systems, Inc., 669 F.2d 1026 (5th Cir. 1982). The party seeking summary

judgment bears an "exacting burden of showing that there is no actual dispute as to any material fact in the case." Impossible Electronic Techniques, Inc., 669 F.2d at 1031; United States Steel Corporation v. Darby, 516 F.2d 961, 963 (5th Cir. 1975).

In determining whether the movant has met its burden, this Court must view the evidence introduced and all factual inferences from that evidence in the light most favorable to the party opposing summary judgment. United States Steel Corporation, 516 F.2d at 963. All reasonable doubts as to the existence of a genuine issue of material fact must be resolved against the movant party. Jones v. Western Geophysical Company of America, 669 F.2d 280, 283 (5th Cir. 1982). When determining whether to grant summary judgment, the Court is merely determining whether a factual dispute

exists and is not required to attempt to resolve those disputes. If it is determined that a factual dispute exists, a motion for summary judgment will be denied. Id. This is true even where the parties agree as to the basic facts but where reasonable minds may differ as to the interpretation of those facts. Impossible Electronic Techniques, Inc., 669 F.2d at 1031. The fact that it appears to the Court that the non-movant party is unlikely to prevail at trial or that the movant's statement of facts appears to be more plausible is not a reason to grant summary judgment. Jones, 669 F.2d at 283. Once the movant has shown the absence of material factual issues, the opposing party has a duty to respond with any factual assertion that would preclude summary judgment. Cleckner v. Republic Van & Storage Co., Inc., 556 F.2d 766, 771 (5th Cir. 1977).

Rule 56(e) of the Federal Rules of Civil Procedure provides that "[w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him." In this respect, the burden on the non-movant party is not especially heavy; however, he must counter the allegations of the moving party with specific facts that present a genuine issue of material fact worthy of trial rather than showing mere general allegations. Gossett v. Du-Ra-Kel Corp., 569 F.2d 869, 872 (5th Cir. 1987); see also John Hancock Mutual Life Ins. Co. v. Johnson, 736 F.2d 315,

316 (5th Cir. 1984) (court "reject[s] appellant's contention that her pleadings created a material fact issue. The express provision of Rule 56 militates against a party relying upon mere pleadings to create fact issues"); Nichols Acoustics, Etc. v. H & M Const. Co., Inc., 695 F.2d 839, 844 (5th Cir. 1983) (mere general allegations are insufficient to meet this burden). As to Rule 56(e) affidavits generally, see Moore's Federal Practice Para. 56.22[2].

Plaintiff filed suit in this cause contending that his rights were violated when he was terminated because of his national origin and in retaliation for speaking out for the rights of Mexican-American employees, all in violation of Title 42, United States Code, Section 2000e. Defendant Jerry Woodson has filed a motion for summary judgment and each Defendant has also

joined in a second motion for summary judgment. As to the Defendants' motion for summary judgment, the Defendants contend that this action should be dismissed as untimely. Because the Court has decided to grant Defendants' motion for summary judgment, the Court will dismiss the motion of Defendant Jerry Woodson for summary judgment as moot.

Under Title VII, a plaintiff must have timely filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") within 180 days of the most recent date of the alleged discrimination. 42 U.S.C. §2000e-5(e). Section 706(e) of Title VII provides an exception to this general rule. In certain deferral states, such as Texas, which have agencies authorized to grant or seek relief from an unlawful act of employment discrimination, a plaintiff may timely file a charge of

discrimination with the EEOC within 300 days of the most recent date of the alleged discrimination if he has "initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice." Here, Defendants contend that Plaintiff's charge of discrimination was filed with the EEOC 217 days after the most recent date of alleged discrimination. Accordingly, Defendants contend that the filing of Plaintiff's charge with the EEOC was untimely because it was filed beyond the 180 day time period. Furthermore, Defendants offer a two-part argument contending that Plaintiff may not take advantage of the 300 day limitation provided by Section 706(e).

Section 706(e) provides in relevant part:

> A charge ... shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred

> ... except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice ... such charge shall be filed by or on behalf of the person aggrieved within 300 days after the alleged unlawful employment practice occurred ...

42 U.S.C. §2000e-5(e). Defendants contend, and this Court agrees, that there are two prerequisites necessary under Section 706(e). These requirements are:

(1) Plaintiff must have "initially instituted proceedings with a State or local agency;" and

(2) The State or local agency must have "authority to grant or seek relief from such practice."

In support of Defendants' motion for summary judgment, the Defendants contend that Plaintiff has fulfilled neither of the above two requirements.

First, Defendants contend that Plaintiff may not take advantage of the additional time permitted by Section 706(e) because Plaintiff never "initially instituted" his charge with the Texas Human Rights Commission ("THRC"). Defendants contend that because Plaintiff instituted his charge with the EEOC, the THRC waived jurisdiction over Plaintiff's charge by virtue of a Worksharing Agreement with the EEOC. Accordingly, Defendants contend that as that part of Section 706(e) dealing with "initially instituted proceedings with a State or local agency" has not been satisfied, Plaintiff may not take advantage of the additional period of time allowed by Section 706(e).

Second, Defendants also contend that even if Plaintiff had "initially instituted" his charge of discrimination with the THRC, that Commission never had

"authority to grant or seek relief from such (unlawful employment) practice," as contemplated by Section 706(e), because Plaintiff's charge with the Commission would also have been untimely. The Texas Commission on Human Rights Act requires that charges of discrimination be filed with the TCHR, "within 180 days after the date of the alleged unlawful employment practice occurred; untimely complaints shall be dismissed by the Commission." Tex. Rev. Civ. Stat. Ann., art. 5221(k), Sec. 6.01(a) (Vernon 1983). Accordingly, Defendants contend that because the Plaintiff filed a time-barred claim with the TCHR, that Commission is not an agency "with authority to grant or seek relief from such practice" as required under Section 706(e). Therefore, Defendants contend that even if Plaintiff satisfied the first requirement of

Section 706(e), Plaintiff has nonetheless failed to satisfy the second requirement.

In response, Plaintiff contends that as to the first issue of whether Plaintiff "initially instituted" his charge with the TCHR, Plaintiff contends that the form Plaintiff filled out with the EEOC was one which allows for a joint filing with the EEOC and the TCHR. See, Plaintiff's Brief in Response at Exhibit A. Exhibit A is the form filled out by Plaintiff when he filed his charge of discrimination. Beneath the "charge of discrimination" designation appears the words "Texas Commission on Human Rights and EEOC." As such, Plaintiff contends that he simultaneously filed a charge before the TCHR and the EEOC. Plaintiff contends that his charge was "initially instituted" with the TCHR when the EEOC forwarded his charge to the TCHR on August 8, 1985, through the use of a

"charge transmittal." See id. at Exhibit B (charge transmittal form). As to the second issue, Plaintiff contends that the TCHR was an agency with "authority to grant or seek relief from such practice," because the filing with the Commission does not have to be timely in order to trigger the 300 day extension. Plaintiff's Brief in Response at 5 (citing Thomas v. Florida Power & Light Co., 764 F.2d 768 (11th Cir. 1985)).

After due consideration of each parties' respective positions, the Court is of the opinion that Plaintiff did not "initially institute" his charge of discrimination with the TCHR, and even if he did, the Commission did not have "authority to grant or seek relief from such practice." As to the first issue, it is clear that the EEOC's charge transmittal to the TCHR was not done to "initially institute" Plaintiff's charge

with the TCHR, but was only done for informational purposes. As shown by the charge transmittal form, the box was checked providing that "[p]ursuant to the worksharing agreement, this charge is to be initially processed by EEOC." See Plaintiff's Brief in Response at Exhibit B; Defendants' Brief in Support at Exhibit 4. In fact, the term "EEOC" was circled. Furthermore, the work sharing agreement provides in part that:

> The EEOC will take primary responsibility for processing all charges originally received by EEOC; except EEOC shall have exclusive responsibility for the following charges ... [a]ll charges covered under Title VII which are received by EEOC beyond 180 days but before 300 days after the alleged violation.

Defendants' Brief in Support at Exhibit 5, Para. 4c.8 (emphasis added). As the EEOC has "exclusive responsibility," the TCHR has waived jurisdiction. Accordingly, the only conclusion which

can be reached from the "charge transmittal" form is that the EEOC's transmittal of the charge to the TCHR was for "information purposes only," and did not constitute "initially institut(ing)" a charge within the meaning of Section 706(e).

On circumstances almost identical to those found here, the Fourth Circuit has held that the use of a "charge transmittal" form was simply for "informational purposes only and did not constitute an 'initially instituted' charge within the meaning of the statute." Dickson v. Westinghouse Electric Corp., 787 F.2d 943, 946 (4th Cir. 1986). In Dickson, the work sharing agreement was identical to the work sharing agreement here. Furthermore, as here, the claimant's charge in Dickson was also filed beyond the six month period but before the 300 day period.

Id. The court in Dickson held that because the plaintiff did not file her EEOC charge within 180 days of her termination, her action was time-barred because she could not take advantage of the 300 day extended period. Id.[1] As shown by Dickson, it is clear that the charge filed by Plaintiff here, was also for "informational purposes only." Here, the work sharing agreement provided the EEOC with exclusive responsibility for all charges filed after 180 days but before the 300 day period. It was never contemplated that TCHR would play any

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[1]The Dickson court also held that the "EEOC's promulgation of 29 C.F.R. §1601.13(a), providing plaintiffs in the referral state 300 days in which to file charges with EEOC even if their state charges are untimely, cannot do away with the statutory requirement that a charge must be initially instituted with the state agency in order for the 300-day filing period of Section 706(e) to apply." Id. at 945. This Court finds that reasoning well taken.

role in the processing of Plaintiff's charge. Accordingly, Plaintiff has not "initially instituted" proceedings with TCHR as required by Section 706(e).

As to the second issue above, as to whether the TCHR was an agency "with authority to grant or seek relief from such practice," it is also clear that Plaintiff has not satisfied this pre-condition to maintain the present suit because even if Plaintiff had initially instituted his charge with the TCHR, that charge would have been untimely under the Texas Commission on Human Rights Act and the TCHR would not have had any authority to grant or seek relief. The Court notes that there is a split of authority on this issue. Compare Thomas v. Florida Power & Light Co., 764 F.2d 768, 771 (11th Cir. 1985) ("the First, Second, Third, Sixth, Seventh, Ninth and Tenth Circuits have

all held that a claimant need not institute proceedings with the State or local agency within the State limitations period in order to take advantage of the Title VII or ADEA deferral state extended filing period.") (and citations therein) with Lowell v. Glidden-Durkee, 529 F.Supp. 17, 22 (N.D. Ill. 1981) (the court rejected the position "that the extended federal filing period applies whenever a plaintiff has first filed with the state agency even when that state filing is a legal nulity because the state limitation period has expired.") (and citations therein and in Defendant's Brief in Support at 18-19)).

The Court has reviewed the conflicting decision and finds that the better reasoned approach is to find that the TCHR is not an agency "with authority to grant or seek relief from such practice," when a plaintiff files an

untimely charge with the Commission. The reason in support of this position is clear:

> In effect, Lowell argues that she should be allowed to ignore her state rights and still preserve her federal rights. She contends that the extended federal filing period applies whenever a plaintiff has first filed with the state agency - even when that state filing is a legal nulity because the state limitation period has expired.
>
> The court rejects this position. The argument that a claimant becomes entitled to the extended filing period, which is designed to allow plaintiffs to exhaust their state remedies without jeopardizing their federal rights, merely because she has filed a meaningless, time-barred charge with the state agency strikes this Court as illogical. To so hold would be to reduce the state filing to a procedural sham.
>
> ...
>
> To rule in plaintiff's favor would be to rule that any plaintiff in a deferral state becomes entitled to the extended filing period simply by filing a charge with the state agency, even though that

> charge is without any significance because it is time-barred. Such a result flies in the face of the purpose behind the extended filing period, which is to allow state agencies the initial opportunity to consider and resolve employment discrimination charges.

Lowell, 529 F.Supp. at 22, 25. The court in Thomas also recognized the illogical nature of plaintiff's argument:

> The district court noted that because the EEOC received the claim within the 300-day period, 'it would appear, at first glance, that plaintiff ... had filed a timely charge of race discrimination with EEOC.' (citation omitted). The court then held, however, that because the state had a 180-day limitation period for bringing discrimination complaints, and because plaintiff did not file within that period, the extended 300-day filing period did not apply.
>
> It seems to us that a sound argument can be made to support the district court's decision. The whole purpose of deferral of federal action is to ensure that a state or local agency will have priority in answering a claim, by giving 'state agencies an opportunity to redress the evil at which the

> federal legislation was aimed, and to avoid federal intervention unless its need was demonstrated.' (citation omitted).
>
> To require the institution of proceedings with a state or local agency with authority to grant relief as a condition to getting the extended 300 days, but not require plaintiff to institute those proceedings within the state's limitation period, defeats the purpose of deferral. Obviously, filing an untimely claim with a state or local agency is a meaningless gesture because the agency does not have authority to grant relief on an untimely claim.

Thomas, 764 F.2d at 770. The Thomas court, however, held that whatever merit there was to this argument, that there was more merit in having federal courts follow the same course in cases of this kind. Id. at 770-71 (citations omitted). It does not appear, however, that the course is as set as the Thomas court suggests. Furthermore, neither Thomas nor the cases cited therein, are controlling in this Circuit.

Accordingly, even if Plaintiff initially instituted his charge with the TCHR, this charge would nonetheless have been time-barred. This is evident by the fact that the work sharing agreement stated that the EEOC had exclusive jurisdiction and that the TCHR would not proceed with the charge. To rule in Plaintiff's favor here would be to fly in the face of the purpose behind the extended filing period and reduce the state filing to a procedural sham because such a filing would be a meaningless gesture as the TCHR would not have had authority to grant relief on an untimely claim. Therefore,

IT IS HEREBY ORDERED that Defendants' motion for summary judgment be and is hereby GRANTED.

IT IS FURTHER ORDERED that the motion of Defendant, Jerry Woodson, for

summary judgment be and is hereby DENIED AS MOOT.

IT IS FURTHER ORDERED that the above-styled and numbered cause be and is hereby DISMISSED WITH PREJUDICE, with Plaintiff to bear the costs of Court.

SIGNED and ENTERED this 1st day of June, 1987, at 2:25 p.m.

WILLIAM S. SESSIONS
Chief Judge

WORKSHARING AGREEMENT

Between

The Equal Employment Opportunity Commission

and

The Texas Commission on Human Rights

1. General

a. Inasmuch as it has been agreed between the Texas Commission on Human Rights (hereinafter referred to as the FEPA) and the Dallas and Houston District Offices of the Equal Employment Opportunity Commission (hereinafter referred to as EEOC) that it is desirable to effect procedures to minimize duplication of effort in the processing of charges and to achieve maximum consistency of purpose and results, this agreement is hereby reached.

b. The FEPA has jurisdiction over allegations of employment discrimination in accordance with the Texas Commission on Human Rights Act, 15 V.A.T.S., Section 5221K. The EEOC has jurisdiction over allegations of employment discrimination in accordance with Title VII of the Civil Rights Act, the Age Discrimination in Employment Act (ADEA) and the Equal Pay Act (EPA).

c. Where concurrent jurisdiction exists, it is the intent of the parties to use substantially compatible case handling procedures and case processing forms.

2. Filing Charges of Discrimination

a. EEOC by this Agreement designates and establishes the FEPA as a limited agent of EEOC for the purpose of receiving charges on behalf of EEOC and the FEPA agrees to receive such charges. This delegation of authority does not include the right of the FEPA to make final determinations on the jurisdiction of the EEOC over charges.

b. Each agency agrees to advise potential charging parties of their right to file with the other agency and will endeavor to help any person alleging discrimination in employment to draft a charge in a manner sufficient to satisfy the filing requirements of the other agency. Charges will be taken on a form mutually agreed upon by the parties.

3. Referral/Deferral of Charges

a. Each agency agrees to forward to the other agency within two (2) working days of receipt all charges which may meet the jurisdictional requirements of the other agency. Such charges shall be hand-delivered or sent by certified, return-receipt-requested mail. Each charge transmitted shall be accompanied by an EEOC Form 212-A, identified by charge number and indicating processing decisions made in accordance with this Agreement.

b. Charges received by one agency which are to be initially processed by the other agency will be forwarded with all supporting documents, including interview notes, to the other agency.

c. Upon receipt of a charge forwarded by the other agency, the receiving agency will review the charge and will respond to the sending agency within ten (10) working days of receipt of the charge. Such responses will be recorded on a copy of the EEOC Form 212-A, which shall accompany the charge and shall include the receiving agency's charge number.

d. Under circumstances in which the FEPA issues a Notice of Right to Sue within the appropriate confines of its statute in concert with Title VII, the FEPA agrees to notify all parties to the charge that upon initiation of litigation pursuant to the Notice of Right to Sue, the State court becomes the chosen forum and any state court decision on the merits of such action will be given full faith and credit by the federal courts, thereby binding the parties to the decision. FEPA further agrees to send a copy of such "choice of forum" notice to the EEOC with the case file.

Failure of the FEPA to notify the parties to the charge as heretofore agreed will result

in denial of contract credit until such time as notification is accomplished and documentation of the notification is received by the EEOC.

e. The EEOC agrees to provide the FEPA with notice of its final actions on all charges in which the FEPA has an interest. The FEPA agrees to issue its notice of Right to Sue with the above-mentioned "choice of forum" notice within thirty (30) days of receipt of EEOC's final action notice.

Failure of the FEPA to issue its notice of Right to Sue within thirty (30) days of notice by the EEOC of its final action will constitute a violation of this Agreement.

4. Worksharing

a. It is the intent of both parties to avoid duplication of case processing efforts wherever possible. In order to achieve this objective, the EEOC and the FEPA agree to implement the following worksharing provisions.

b. The FEPA will take primary responsibility for processing all charges originally received by the FEPA except as otherwise provided in paragraph 4(c). In addition, the FEPA shall take responsibility for processing charges which were originally filed with EEOC and which are deferred to it by the EEOC under this Worksharing

Agreement and Section 706(c) of Title VII.

c. The EEOC will take primary responsibility for processing all charges originally received by EEOC; except EEOC shall have exclusive responsibility for the following charges:

1. Charges filed by the EEOC or its Commissioners.

2. Charges where it is determined that immediate, temporary or preliminary relief is appropriate and can be obtained most expeditiously through the federal courts.

3. Charges filed against the FEPA.

4. All charges received by the FEPA against the respondents listed in Attachment A. The respondents will be identified by EEOC as need arises and in accordance with those needs, Attachment A will be revised.

5. All charges which, in whole or in part, allege a violation of the Equal Pay Act and which are filed with EEOC and/or the FEPA.

6. All charges alleging age discrimination under the Age Discrimination in Employment Act, which arise from directed investigation.

7. All charges alleging, in whole or in part, age discrimination under the Age Discrimination in Employment Act, except as designated by separate contract.

8. All charges covered under Title VII which are received by EEOC beyond 180 days but before 300 days after the alleged violation.

9. Charges filed against employers, other than State agencies, located in the counties of Dallas, Bexar, and Harris, except that fifteen (15) charges from Dallas County, fifteen (15) charges from Harris County, and five (5) charges from Bexar County will be deferred to the FEPA on a monthly basis. After the expiration of six (6) months from the date of this Agreement, the figures contained herein will be re-evaluated.

10. Charges wherein the FEPA Commissioners may have an apparent conflict of interest in the employee/employer relationship as an employer or where there exists any obvious family or personal relationships such as those between employees and their parents, children, or spouse, when the

circumstances make it clear that those relationships would create a conflict of interest.

11. Charges filed against any labor union, firm, association or individuals participating in a U.S. Department of Labor approved statewide home town plan on or before September 24, 1983.

12. Charges that are selected under the Early Litigation Identification (ELI) Program by the EEOC.

13. Charges originally filed with the El Paso Area Office, except those filed against State agencies.

14. All charges taken by EEOC under the Expanded Presence Program.

15. All charges dual-filed with the Department of Education will be processed exclusively by the EEOC. Charges initially filed with the FEPA and then dual-filed with the EEOC are treated the same as charges received independently by the EEOC.

16. All Section 704(a) charges will be processed exclusively by the EEOC where the original 703 charge is or has been processed by the EEOC.

17. All charges that fall within the jurisdiction of any other designated 706 agency in the state of Texas.

d. In order to facilitate early resolution of charges and to promote the purposes of the EEOC and the FEPA, the FEPA hereby waives the exclusive jurisdiction granted to it by 706(c) of Title VII for those charges assigned by this Agreement to the EEOC.

e. If for any reason an agency determines that it cannot process a charge for which it bears initial responsibility pursuant to this Agreement, that agency will immediately inform the other agency of its inability to process the charge in writing.

f. EEOC may defer charges directly to the Fort Worth Human Relations Commission, the Austin Human Relations Commission, and the Corpus Christi Human Relations Commission.

5. Exceptions and Adjustment to Worksharing Provisions

a. Where either party has obtained a conciliation agreement or is administering or monitoring a legal order pertaining to a respondent, the party will take primary responsibility for charges which are affected by such agreements or orders. The party wishing the exception

shall, in writing, notify the other party immediately.

b. It is understood and agreed that charges of retaliation must receive priority. Both parties will endeavor to assure that this priority is met. Where one agency has a charge in active processing and a charge alleging retaliation is received by the other agency from the same charging party against the same respondent, that charge will be sent to the first agency to be consolidated with the original charge for processing.

6. Information Sharing

a. All communication regarding charges will include names of respondents and charging parties and EEOC and FEPA charge numbers.

b. Each agency agrees to comply with the confidentiality requirements of the other agency, especially with regard to records, documents or any other information obtained by one agency from the other agency.

It is further understood and agreed that information, including information acquired or developed in connection with settlement or conciliation attempts, will not be made public where such disclosure would be contrary to statutory or regulatory provisions or policies applicable to settlement or conciliation

proceedings. Sharing of such information, including information on settlement or conciliation attempts, by the EEOC and the FEPA with each other shall not be deemed to be making such information public.

c. The EEOC may request or permit personnel of the FEPA to accompany and observe EEOC personnel on investigations and on conciliation of cases falling within their joint jurisdiction.

d. Both parties agree to provide each other with all resource and research data available and permitted by law, that will assist in the processing of charges.

7. Substantial Weight Review Process

a. The FEPA will provide a monthly report to the Dallas and Houston District Offices of the EEOC of all actions taken on charges deferred to the FEPA for processing and of all actions taken on other charges received by the FEPA for EEOC. It is agreed that such reports will be received by the Dallas and Houston District Offices of the EEOC no later than the eighth (8th) day after the ending of the reporting month.

Each report will include EEOC Form 322 (FEPA Monthly Performance Report) and EEOC Form 472, listing the charges and closure actions taken. Additionally, the FEPA will forward the original

investigative case file, along with the final action for every closure listed on the Form 472. The investigative file together with the documents designated above will be sent to either the Dallas District Office or the Houston District Office based upon the geographic area in which the charge originated. This practice will continue until the FEPA meets the Commission's standards to become a Certified Agency.

Failure to timely submit reports pursuant to this section will result in denial of contract credit until such time as the reports are filed.

b. EEOC will conduct a Substantial Weight Review of all final actions of the FEPA. Substantial weight will be given to those final actions deemed to have been supported by acceptable investigations, as defined by EEOC Order 916, Appendix A and Appendix C, attached hereto. No credit will be given to any final action of the FEPA which does not conform to the standards for the granting of substantial weight. EEOC will provide copies to the FEPA of all such reviews, evaluations, and dispositions.

8. Implementation of the Worksharing Agreement

a. Each agency will designate one person as a liaison officer for the purpose of coordinating

activities under this Agreement. All requests for information and all questions concerning this Agreement and related matters will be handled by the designated liaison officers.

b. Both parties will provide training to designated staff in order to assure that the purposes and intent of this Agreement are carried out effectively.

c. Representatives of the Dallas District Office and the FEPA will meet periodically, but not less than once every six (6) months after the signing of this Agreement, to review the Agreement, and if necessary, modify the Agreement.

d. The terms and provisions of this Agreement may be renegotiated at any time by mutual consent of the parties.

e. This Worksharing Agreement terminates on September 30, 1985, which is the last day of the 1985 Fiscal Year.

BY SIGNATURE, THE DALLAS DISTRICT OFFICE OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ACTING BY AND THROUGH LORENZO RAMIREZ, ITS DULY AUTHORIZED DISTRICT DIRECTOR, AND THE TEXAS COMMISSION ON HUMAN RIGHTS, ACTING BY AND THROUGH WILLIAM M. HALE, ITS DULY AUTHORIZED EXECUTIVE DIRECTOR, DO HEREBY AGREE TO PERFORM IN GOOD FAITH AND WITH DUE DILIGENCE THE WORK AND SERVICES DESCRIBED IN THIS WORKSHARING AGREEMENT.

FOR THE EQUAL EMPLOYMENT COMMISSION	FOR THE TEXAS COMMISSION ON HUMAN RIGHTS
Lorenzo Ramirez, Director EEOC-Dallas District Office	William M. Hale Executive Director Texas Commission on Human Rights
January 10, 1985 Date	January 9, 1985 Date

ATTACHMENT A

CHARGES FILED AGAINST THE FOLLOWING RESPONDENTS WILL BE PROCESSED BY THE EEOC:

1. General Dynamics

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
DALLAS DISTRICT OFFICE
8303 ELMBROOK DRIVE
DALLAS, TEXAS 75247

NOTICE TO PRIVATE LITIGANT:

The United States Supreme Court has held in Kremer v. Chemical Construction Corporation, 456 U.S. 461 (1982), that a federal district court must generally dismiss a Title VII action involving the same parties and raising the same issues as those raised in a prior state court action under a state fair employment practices law. Therefore, filing a law suit in state court based on the issuance of this notice of right-to-sue may prevent you from filing a law suit in federal court based on Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e - et. seq.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
SAN ANTONIO AREA OFFICE
727 E. DURANGO, SUITE B-601
SAN ANTONIO, TEXAS 78206

August 9, 1985

Charge No. 065852055
Respondent: Valero Energy Corp.

Dear Mr. Urrutia:

The Equal Employment Opportunity Commission (EEOC) has assumed jurisdiction of the complaint of employment discrimination you filed. A courtesy copy of your complaint has been forwarded to the Texas Commission on Human Rights, P.O. Box 13493, Austin, Texas 78911, for their information only.

Your complaint has been assigned the above charge number, so please refer to that number whenever you contact this office. A copy of your charge or notice of your charge will be served on the Respondent within ten (10) days of the date your charge was received by this office, as required by law.

If you have previously filed a complaint with either the Texas Commission on Human Rights, the City of Austin Human Relations Commission, or the City of Corpus Christi Human Relations Commission, alleging the same issues as you have in this charge, please contact this office immediately at the following number: 512/229-6051.

EEOC regulations require that you notify this office of any change of your address

as well as inform us of any prolonged absences from your current address. Your cooperation in this matter is essential.

Sincerely,

R. Edison Elkins
Acting Area Director

REE/hw